DEPARTMENT OF STATE REVENUE

02950427.LOF

LETTER OF FINDINGS NUMBER: 95-0427 ITC
Gross Income Tax
For Tax Period: 1991 Through 1993

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. Gross Income Tax: Capital Contribution Exemption

Authority: IC 6-2.1-1-2(c)(14); 45 IAC 1-1-21; 45 IAC 1-1-58.

The taxpayer protests the inclusion of stock, received in exchange for real estate, in the taxpayer's gross receipts.

STATEMENT OF FACTS

The taxpayer is a Tennessee corporation that owns, operates and franchises restaurants in 36 states and Canada. Taxpayer also owns subsidiary corporations. One such subsidiary was created during the audit period. Taxpayer transferred real property to the subsidiary, solely in exchange for all of the originally issued stock of the subsidiary. This resulted in no tax liability federally under section 351(a) of the Internal Revenue Code, no gain or loss recognized by either corporation. The Department, however, assessed taxpayer for a sale of real estate at the higher rate under IC 6-2.1-2-5(9). The taxpayer protests this assessment and claims exemption under 45 IAC 1-1-58.

DISCUSSION

IC 6-2.1-1-2(c)(14) provides an exemption for receipt of capital and capital contributions. This exemption is explained in more detail in the administrative code, 45 IAC 1-1-58 which reads:

> Contributions of capital to a corporation, joint venture, or partnership are exempt from gross income tax. No gross receipts result to the recipient of the capital and none result to the donee upon his receipt of stock in exchange for the capital.

The transaction in question falls within this exemption.

FINDINGS

The taxpayer's protest on this issue is sustained. Because the taxpayer owes no tax, its protest of the penalty is also sustained.